

October 26, 2018

National Freedom of Information Act Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Act Request for Records Regarding FY17 Civil Enforcement

Dear FOIA Officer:

I write to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable EPA regulations at 40 C.F.R. §§ 2.100-2.406.

In this request, the term "records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, social media posts, text messages, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any EPA office, and specifically includes any EPA offices in possession of responsive records.

I. Description of Records Sought

Please produce records of the following types in EPA's possession, custody or control:

1. The "frozen" data from the Integrated Compliance Information System (ICIS), the Superfund Enterprise Management System (SEMS), and the Resource Conservation and Recovery Act Information (RCRA Info), including any manual adjustments EPA made to that data, for enforcement results for Fiscal Year 2017. "Frozen" for purposes of this request means the data that was used for the FY17 Enforcement Annual Results Data Graphs dated February 8, 2018. This request seeks the detailed "frozen" case specific data for all civil judicial and civil administrative cases that were used to calculate the totals contained in the annual results described in the "numbers at a glance" document under the headings "monetary commitments from concluded cases," "superfund cleanup" and "civil enforcement and compliance activities," including at minimum for each case:
 - Case Number
 - Case Name
 - Case Category
 - Case Status
 - Primary Law
 - Date Filed
 - Date Lodged
 - Date Settled
 - Federal Penalty
 - SEP Cost
 - Total Complying Action

- Oversight Costs
- Cost Recovery

This request is not seeking the underlying data that supports the summary totals listed under the heading “results” in the “numbers at a glance,” sometimes referred to as “environmental benefits.”

This request asks that the records be produced in spreadsheet format if they exist in that format.

2. Any record that describes in detail what categories of case results are included in calculating each summary number presented in the annual enforcement results under the headings “civil monetary commitments,” “superfund cleanup enforcement” and “civil enforcement and compliance activities,” and what categories are not included in each such summary number, including but not limited to what categories of superfund recoveries/actions are counted as part of “estimated value of complying actions to be taken in response to EPA’s concluded enforcement actions (injunctive relief)” and what categories of administrative actions are counted as administrative cases “concluded” in a given fiscal year. These illustrative questions are intended to describe the type of record requested and are not intended to limit the scope of the request.
3. If any record responsive to requests 1 or 2 above contains enforcement confidential information not subject to disclosure under FOIA, please provide the requested records with the confidential information redacted or omitted.

II. Request for a Fee Waiver

I request that EPA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1).

The requested disclosure would satisfy EPA’s Fee Waiver Standards, because disclosure would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), and the requestor does not have any commercial interest that would be furthered by the requested disclosure. Each of the factors used by EPA to evaluate a fee waiver request indicates that a fee waiver is appropriate for this request. *See* 40 C.F.R. § 2.107(l)(2).

1. Subject of the request. The records requested here relate to the environmental enforcement cases undertaken by EPA. Enforcement of the nation’s environmental laws is an inherently governmental function. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

2. Informative value of the information to be disclosed. The requested records are “likely to contribute to” the public’s understanding of government operations and activities, 40 C.F.R. § 2.107(l)(2)(ii). The

cases that EPA is undertaking to enforce the nation's environmental laws are a central part of the agency's mission to protect the public. Disclosure of information about such actions is very likely to contribute to public understanding of the Agency's operations and its enforcement of the nation's environmental laws. The records requested are not currently in the public domain; the ECHO records that are on line do not indicate which cases were the basis of EPA's annual enforcement results. Disclosure of the requested information would meaningfully inform public understanding with respect to a topic of great public interest.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure. The requestor's expertise in enforcement, having served as the Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance for eight years, and her history of participation in the public national discussion on environmental enforcement, including public speaking and interviews with reporters, indicate that she has the ability and the intention to effectively convey information to the public. 40 C.F.R. § 2.107(l)(2)(iii). The requestor intends to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal.

4. Significance of the contribution to public understanding. The records requested would shed light on a matter of considerable public interest and concern: the effective enforcement of the nation's environmental laws. Public understanding of the topic would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the approach to enforcement being taken by the Agency and the extent to which the Agency is taking action to protect the public from environmental violations. 40 C.F.R. § 2.107(l)(2)(iv).

5. The existence and magnitude of a commercial interest. The requestor does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), (3). The requestor intends to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the subject of this request. Enforcement of the nation's environmental laws is a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the underlying subject matter and associated threats to human health and the environment.

6. The primary interest in disclosure. The requestor has no commercial interest in this request, and the public interest standard is more than satisfied, as explained above.

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, I will, if necessary and under protest, pay fees in accordance with EPA's FOIA regulations at 11 40 C.F.R. § 2.107(c)(1)(iv) for all or a portion of the requested records. See 40 C.F.R. § 2.107(l)(4). Please contact me before doing anything that would cause the fee to exceed \$250. I reserve my rights to seek administrative or judicial review of any fee waiver denial.

Please email the requested records to me at cynthia.giles@gmail.com. Please send responsive records on a rolling basis; EPA's search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce.

Please do not hesitate to contact me with any questions. Thank you.

Sincerely,

/s/ Cynthia Giles

Cynthia Giles